

### **REMARKS**

Applicants respectfully request reconsideration of the present case in view of the above amendments and the following remarks. Claims 1, 3, 13-15, 27, 29, 59, 61, 65, and 68 are pending. Claim 1 has been amended. No claims have been added or canceled. No new matter has been inserted.

Support for the amendment to claim 1 can be found in the specification as filed at least at page 4, lines 2-6; and page 5, lines 1-6.

#### **35 U.S.C. § 102(e)**

In the final Office Action of November 24, 2009, claims 1, 3, 13-15, 27, 29, 59, 61, 65 and 68 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Pat. Publ. No. 2004/0260363A1 (Von Arx et al.). Applicants respectfully traverse this rejection.

Claim 1 is directed to an apparatus for securely authenticating a data exchange session with an implantable medical device. Specifically, as amended, claim 1 requires “an external device comprising a key generator configured to dynamically generate a crypto key for each data exchange session with an implantable medical device; the external device configured to establish an inductive telemetric link to the implantable medical device and to download the crypto key to the implantable medical device through the inductive telemetric link for each data exchange session; the external device configured to then transact the data exchange session with the implantable medical device through a long range telemetric link authenticated with the crypto key.”

The Office Action notes that Von Arx discloses, “In another embodiment, both implantable and external devices are capable of randomly generating new public/private key pairs by the RSA algorithm or through some other standard key pair generating algorithm. In this embodiment, new keys can be generated when the physician commands it via secure short-range inductive telemetry.” See Von Arx, paragraph [0043], lines 20-26.

However, Applicants note that the external device described in the excerpt above does not dynamically generate a crypto key for each data exchange session. Therefore, Von Arx fails to teach at least these limitations of claim 1 and Von Arx fails to render the invention of claim 1 anticipated. As claims 3, 13-15, 27, 29, 59, 61, 65, and 68 are dependent on claim 1, they are

also not anticipated by Von Arx. Applicants respectfully request that this rejection be withdrawn.

Additionally, Applicants observe that the cited reference Von Arx (U.S. Pub. No. 2004/0260363A1) only qualifies as prior art under § 102(c) and cannot be used to support a 103(a) rejection. The effective filing date of the present application is earlier than the publication date of Von Arx (the publication date of Von Arx is December 23, 2004, and the effective filing date of the present application is March 15, 2004.) Further, the invention of Von Arx and the invention of the present application were owned by or subject to an obligation of assignment to the same entity at the time of invention. Both Von Arx and the present application are assigned to Cardiac Pacemakers, Inc. Since Von Arx is only a prior art reference under § 102(c), the Von Arx reference is disqualified as prior art for obviousness pursuant to 35 U.S.C. § 103(c)(1). Thus, not only does Von Arx fail to anticipate the present invention, Applicants also note that Von Arx cannot be combined with other references to render the present invention obvious.

### **Summary**

In view of the above amendments and remarks, Applicants assert that the pending claims are in condition for allowance and respectfully requests notification to that effect. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,

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Date

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